

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

GRAVEL RATING SYSTEMS, LLC

v.

McAFEE, LLC.

**CIVIL ACTION No. 4:21-cv-259-ALM**

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GRAVEL RATING SYSTEMS, LLC

v.

BROADCOM, INC.

**CIVIL ACTION No. 4:21-cv-329 ALM**

**MEMORANDUM OPINION AND ORDER**

Pending before the Court is Defendant McAfee, LLC's Motion to Strike the Expert Declaration of Hernandez as Extraneous Material Outside the Proper Scope of a Rule 12(b)(6) Motion (Dkt. #23). After reviewing the relevant pleadings, the Court finds Defendant's motion should be **DENIED as moot**.

Plaintiff Gravel Rating Systems LLC ("Gravel") asserts infringement of claims 4-5 and 8-9 of its U.S. Patent No. 7,590,636 (the "'636 patent") against Defendant McAfee, LLC ("McAfee"). On June 23, 2021, Defendant McAfee, LLC ("McAfee") filed its Motion to Dismiss and Brief in Support (Dkt. #11). On July 9, 2021, Defendant Broadcom, Inc. ("Broadcom") filed its Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim which adopted McAfee's Motion to Dismiss and requested to join McAfee's motion (Dkt. # 10). On August 6, 2021, Gravel filed a combined response to Defendants' motions (Dkt. #16). Attached to Gravel's response is the Declaration of Dr. Edwin Hernandez, in which Dr. Hernandez renders numerous opinions regarding the validity of the '636 Patent (the "Declaration") (Dkt. #16 Exhibit 2).

McAfee moved to strike the Declaration as extraneous material outside the proper scope of a Rule 12(b)(6) motion on August 30, 2021 (Dkt. #23). On November 15, 2021, this Court denied McAfee and Broadcom's motions to dismiss (Dkt. #35). In making its ruling, the Court did not consider the Declaration (Dkt. #35 at p. 3 n.1). Thus, McAfee's arguments for the Court to strike the Declaration are now moot.

It is therefore **ORDERED** that Defendant McAfee, LLC's Motion to Strike the Expert Declaration of Hernandez as Extraneous Material Outside the Proper Scope of a Rule 12(b)(6) Motion (Dkt. #23) is hereby **DENIED as moot**.

**IT IS SO ORDERED.**

**SIGNED this 29th day of November, 2021.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE